IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 2628 of 2003
with
CIVIL APPLICATION NO. 9059 OF 2003

For Approval and Signature:

HON'BLE MR.JUSTICE KSHITIJ R.VYAS
and
HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

DR.PRABHAKAR V VASAVADA

Appearance:
MR HL JANI, AGP for Appellants/applicants
MR HJ NANAVATI for Respondent

CORAM : HON'BLE MR.JUSTICE KSHITIJ R.VYAS
and
HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 11/03/2004

COMMON ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE KSHITIJ R.VYAS)

With consent of the learned Advocates appearing for the parties, the matter is taken up for final hearing today.

2. The appellants - original defendants, in this appeal under Section 96 of the CPC have challenged the judgment and decree dated 7.4.2003 passed in Special Civil Suit No.111 of 2000 by the 5th Jt.Civil Judge (SD), Junagadh whereby the learned Judge has awarded Rs.1,59,890/- with 12% interest from the date of the suit till realisation, to the respondent (plaintiff).

3. The plaintiff was, at the relevant time, serving as a Class-II Medical Officer in the Civil Hospital, Junagadh. After attaining the age of superannuation, he retired on 31.7.1998. According to the plaintiff, his wife was also serving as a Medical Officer, Class-II. While they were serving at Jetpur, an incident had taken place wherein the wife of the plaintiff was involved, in a raid carried out by ACB. The plaintiff was suspended on the allegation that he aided his wife with respect to the said incident from 26.10.1988 to 16.12.1988. It appears that in the ACB Case No.3 of 1996, the plaintiff was acquitted on 27.3.1998. Against the said order, an appeal was preferred by the State and the same was also dismissed. The plaintiff, in the meantime, was retired from service on 31.7.1998. He accordingly filed representations on 29.7.1998, 15.10.1998 and 29.10.1998 and claimed pension and gratuity. According to the plaintiff, the Suit being Civil Suit No. 711 of 1988 filed by him challenging the order of suspension was also decided by the Civil Court on 15.3.1994 wherein the suspension was declared illegal. An appeal being Regular Civil Appeal No.69 of 1995 filed by the State was also dismissed by the appellate Court.

The plaintiff filed the present suit wherein he has claimed interest, as according to the plaintiff, there was a delay of 15 months in making the payment of Pension as well as the amount of Gratuity.

The learned trial Judge, after appreciating the evidence on record, recorded a finding that the retirement benefits have been withheld illegally by the appellants and therefore, the plaintiff is entitled to claim interest on the retirement benefits. He accordingly passed the decree in the sum of Rs.1,59,890/- with 12% interest from the date of the suit till

realisation. Hence, the present appeal.

4. On 16.2.2004, when the appeal came up for hearing, we had suggested Mr.Nanavati, learned Advocate appearing for the respondent to take instruction in the matter as to whether the respondent is prepared forgo the amount of interest awarded at the rate of 12% by the trial Court.

5. Today, when the matter is called out for hearing, learned Advocate Mr.Nanavati has fairly conceded that the respondent has accepted the suggestion of the Court and is prepared to forgo the amount of interest awarded by the trial Court. We appreciate the good gesture shown by the respondent.

6 As far as the retirement dues for which the decree is passed, learned AGP Mr.Jani has not made any grievance. In this view of the matter, it is not necessary for us to ascertain the legality of the retirement dues as ordered by the trial Court.

7. In the result, the appeal is partly allowed. The judgment and decree dated 7.4.2003 passed by the trial Court in awarding Rs.1,59,890/-, the amount being retirement benefits, in favour of the respondent is confirmed. However, the order directing the appellants to pay the said amount with interest at the rate of 12% from the date of the suit till realisation, is set aside. The appellants are directed to pay the amount of Rs.1,59,890/- within four weeks from today, failing which the respondent will be entitled to claim interest at the rate of 12% per annum from today. Order accordingly. There shall be no order as to costs.

8. In view of the order passed in the main appeal, the Civil Application for stay does not survive and is accordingly disposed of.

(Kshitij R. Vyas, J.)

(K.S. Jhaveri, J.)

Sreeram.